

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE: EUGENE L. SHORE,

Debtor.

**Case No. 03-43072
Chapter 11**

**ORDER DENYING DEBTOR'S OBJECTION TO CLAIM NO. 25
OF TRI-ROTOR SPRAY AND CHEMICAL, SOLELY
ON BASIS OF PROCEDURAL IRREGULARITY IN FILING**

Debtor filed an Objection to Claim No. 25 of Tri-Rotor Spray on the basis that the original of that claim was not filed until February 3, 2004, one day after the bar date. The Court heard evidence regarding the filing of that claim, and makes the following findings of fact. The Court rules, at this time, only on the procedural validity of the Claim, expressly reserving any objection Debtor may later make to the underlying merits of the claim.¹

Findings of Fact

The Wright, Henson, Clark and Baker, LLP law firm (hereinafter WHCB) represents the Unsecured Creditor's Committee (hereafter "Committee") in this case. A few days before the bar date, in accordance with normal firm policy, WHCB sent a note to Committee member Larry Smith, President of Tri-Rotor Spray, because he represented a claim holder who had not yet filed a proof of claim. All other members of the Committee had filed a proof of claim by that date, so no notice was sent to them. On the bar date, February 2, 2004, Tri-Rotor staff contacted the secretary for Patricia Hamilton, the attorney at WHCB who is representing the Committee, inquiring how to get a proof of claim timely filed, given the

¹ Debtor has indicated an intent to possibly dispute the claim because of negligent spraying of crops. This decision does not prejudice an objection on that, or other, issues going to the merits of the claim.

imminent bar date, and the fact poor weather would prevent it from driving the claim to Topeka. Tri-Rotor staff also contacted the Clerk of the Bankruptcy Court, who advised that local fax filing rules did not contemplate the filing of proofs of claim, suggesting Tri-Rotor attempt to find Topeka counsel who could deliver the claim to the Clerk.

Tri-Rotor staff then prepared a proof of claim, faxed it to staff at WHCB, who in turn put it in a stack of pleadings to be filed at the Bankruptcy Clerk's office. The claim, albeit with a faxed signature, was then personally filed by a WHCB courier and received the Clerk's "FILED" stamp dated February 2, 2004. The "original" filed with the Court that date was assigned Claim No. 25, and was signed by a member of the Clerk's staff. Tri-Rotor then placed the original of the Proof of Claim, with Mr. Smith's original signature, in a Federal Express package, which was received by the Court the next day. The Clerk's staff stamped in the original, which is now denoted Claim No. 26, on February 3, 2004. These two claims are in all respects identical, except that Claim No. 26 bears the original signature of Larry Smith and Claim No. 25 bears a fax copy of Mr. Smith's signature.

Claim No. 25 contains fax transmittal data on the top of each page, which purports to indicate the date and time the fax was sent. This date and time is determined by the sending fax machine. The data on Claim No. 25 indicates that the fax was sent to WHCB on February 2, 2004, at 20:41. At the hearing on April 21, 2004, Debtor tried to establish that, because the transmittal data on the faxed proof of claim indicates the fax was not sent to WHCB until after the close of business on February 2, that the Clerk's office had made an error, and that the first proof of claim could not have actually been filed until February 3, 2004, one day late. The testimony of Tri-Rotor staff completely refuted this argument, however, when phone records for its facsimile machine verified that the claim was in fact faxed to WHCB on February 2

in the morning, not at 20:41, as the fax read. This was corroborated by the testimony of Hamilton's secretary, who testified she received the fax before 1:00 P.M. The discrepancy in the time appearing on the fax and the actual time the document was sent was caused by the fact that Tri-Rotor frequently loses electrical power, and makes no effort to reset the time on the fax machine because the time of faxes has not before been critical.

Conclusions of Law

After hearing evidence on April 21, 2004, the Court held that Claim No. 25 was, in fact, filed on February 2, 2004, and offered the parties an opportunity to brief whether the filing of a claim on which a faxed signature, instead of an original signature, appears is so procedurally defective as to render it not timely filed. Debtor first argued that this was in essence a "fax filing," in violation of LBR 5074.1, and should be stricken on this basis. The Court orally ruled that it was not a "fax filing," as that term is contemplated in LBR 5074.1, because it was received over the counter in the Clerk's office, and not on the Clerk's facsimile machine, which is the contemplation of LBR 5074.1. The Court agrees with the rationale for not treating this as a faxed filing, as well articulated by Tri-Rotor in its memorandum filed May 5, 2004 (Doc. No. 173).

Debtor next argues that because no duplicates of the Proof of Claim were filed, it is invalid. Evidence received at the hearing demonstrates a duplicate was filed, as the Clerk's office released a copy to the courier. Debtor also argues that Tri-Rotor's failure to serve a copy of the claim on Debtor's counsel is also fatal. The Court disagrees that failure is sufficient to render a filing invalid. Furthermore, clearly Debtor's counsel became aware of the filing in sufficient time to take action, including to object to the claim, so the Court declines to invalidate the filing on this basis.

Debtor's final argument requires more analysis. He contends that because there was no original signature on the claim filed by the bar date, the filing was invalid. Admittedly, the requirement for the timely filing of proofs of claim furthers "the policy favoring quick and effective settlement of bankruptcy estates."² The Court finds, however, that under the facts of this case, the lack of an original signature on the otherwise timely filed proof of claim is not fatal for several reasons.

Bankruptcy Rule 3001(a) defines proof of claim as "a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form."⁶ Perhaps picking up on the word "substantially," bankruptcy courts over the years have developed an informal proof of claim "doctrine," largely to ameliorate the perceived harsh result of strict enforcement of the claims bar date.⁴ The doctrine permits a court to treat something other than a proof of claim as an "informal" proof of claim that is timely filed, and thereafter, the creditor is allowed to file a "formal" proof of claim that relates back to the date of the original filing.⁵

The United States Court of Appeals for the Tenth Circuit has utilized the following five-prong test with respect to informal proofs of claim: 1) the proof of claim must be in writing; 2) the writing must contain a demand by the creditor on the debtor's estate; 3) the writing must express an intent to hold the debtor

²*In re Pernie Bailey Drilling Co.*, 105 B.R. 357, 362 (Bankr.W.D. La.1989)

³Bankr. R.3001(a).

⁴8 Collier on Bankruptcy ¶ 3001.03 (Lawrence P. King ed. 1993).

⁵ *Id.* at 3001-13.

liable for the debt;⁶ 4) the proof of claim must be filed with the Bankruptcy Court; and 5) based on the facts of the case, it would be equitable to allow the amendment.⁷ Normally this analysis surrounds pleadings that have been filed, such as objections to plans, or motions for relief from stay, and sometimes even demand letters, not actual Form B10 (official form) Proof of Claim forms, as we have here, which clearly contains the requisite content. Debtor has not argued prejudice, and the Court can conceive of no argument whereby the one day delay in having the Official Form B10 Proof of Claim, with Tri-Rotor's president's original signature, rather than a copy of that same form, would prejudice Debtor or any creditor. The timely Claim No. 25, which admittedly did not contain a proper signature, provided adequate notice of the existence, nature, and amount of the claim, as well as Tri-Rotor's intent to hold the estate liable.⁸ For that reason, the Tenth Circuit has mandated that amendments to such claims should be liberally granted.⁹ Accordingly, Claim No. 26, filed only one day after Claim No. 25, will be deemed an amendment to Claim No. 25.

⁶The fact that Tri-Rotor's President is on the Unsecured Creditor's Committee also leaves no doubt that it intended to hold the estate liable, and that it intended to press its claim.

⁷*Clark v. Valley Fed. Savs. & Loan Ass'n (In re Reliance Equities, Inc.)*, 966 F.2d 1338, 1344 (10th Cir.1992).

⁸*In re Unioil, Inc.*, 962 F.2d 988, 992 (10th Cir. 1992) (allowing amendment where no prejudice, and amendment merely substituted the Trust as the proper claimant).

⁹*Id.* at 992-93. *Also see In re Tanaka Bros. Farms, Inc.*, 36 F.3d 996 (10th Cir. 1994) (holding even late-filed amendment with significantly higher claimed amount than was contained in original proof of claim should be allowed).

The Court holds that Claim No. 25, as amended by Claim No. 26, was timely and is procedurally valid, and thus the Court overrules Debtor's objection on these basis. This decision is without prejudice to Debtor filing a timely objection to the merits of those claims.

IT IS, THEREFORE, ORDERED that Debtor's Objection to Proof of Claim 25, on the basis of procedural irregularities surrounding the filing of that claim, is overruled, and Proof of Claim 26 is deemed a timely amendment to Claim No. 25.

IT IS SO ORDERED this ____ day of May, 2004.

JANICE MILLER KAOLIN
United States Bankruptcy Judge
District of Kansas

CERTIFICATE OF MAILING

The undersigned certifies that copies of the **Order Denying Debtor's Objection to Claim No. 25 of Tri-Rotor Spray and Chemical, Solely on Basis of Procedural Irregularity in Filing** was deposited in the United States mail, prepaid on this ____ day of May, 2004, to the following:

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